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Milan Gorby, and James L. Bridges

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

JOHN SAYYAH, <i>pro se</i>, et al.,	:	Case No. C-1-01-459
	:	
Plaintiffs,	:	Judge Watson
	:	Magistrate Judge Black
vs.	:	
	:	MEMORANDUM OF DEFENDANTS
WAYNOKA PROPERTY OWNERS	:	DONALD E. FENDER, INC., JAMES L.
ASSOCIATION, INC., et al.,	:	BRIDGES AND MILAN GORBY IN
	:	OPPOSITION TO PLAINTIFFS' MOTION
Defendants.	:	RAISING SUBSTANTIAL QUESTIONS
	:	AS TO MATERIAL FINDINGS OF FACT
	:	AND CONCLUSIONS OF LAW IN THIS
	:	COURT'S DECISION OF 03/04/05
	:	PURSUANT TO FEDERAL RULE OF
	:	<u>CIVIL PROCEDURE 52(B)</u>

Come now Defendants Donald E. Fender, Inc., James L. Bridges, and Milan Gorby ("Fender Defendants"), by and through counsel, and urge this Court to deny Plaintiffs' Motion Raising Substantial Questions as to Material Findings of Fact and Conclusions of Law in this Court's Decision of 03/04/05 pursuant to Federal Rule of Civil Procedure 52(B). Specifically, there are no manifest errors of law or fact in this Court's Decision, and Plaintiffs' Motion under Federal Rule of Civil Procedure 52(B) is not well founded. This Memorandum in Opposition is supported by the attached Memorandum of Law.

Respectfully submitted,
KOHNEN & PATTON LLP

/s/ Colleen M. Blandford

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MEMORANDUM OF LAW

Plaintiffs bring this Motion seeking reconsideration of this Court's Decision of March 4, 2005 pursuant to Federal Rule of Civil Procedure 52(B). Under that Rule, a Court's findings of fact and conclusions of law may be amended "to correct manifest errors of law or fact." *In Re National Magazine Publishing Company* (1994 ND Ohio BR) 172 B.R. 237; *In Re Braithwaite* (1996 ND Ohio BR) 197 B.R. 834. Rule 52(B) "is not intended to provide a litigant with a rehearing." *In Re National Magazine Publishing Co., supra*. At bar, because there were no manifest errors of law or fact in this Court's decision of March 4, 2005, Plaintiff's Motion must be denied.

The grounds for Plaintiffs' Motion is that the issue of fraud upon the court was not fully addressed and was not resolved in this Court's decision of March 4, 2005. However, a review of this Court's Order Adopting Magistrate Judge's Report and Recommendation shows that the first nine pages of that decision fully address and resolve the issue of fraud on the court. Specifically, after the nine page discussion of Plaintiffs' claim, the Court held that "Based on the foregoing, this Court determines that there was no fraud upon this Court..." *See* Order, p. 9. From this it is clear Plaintiffs' current Motion is not well taken.

As recognized by this Court in its Order, "A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or jury or fabrication of evidence by counsel and must be supported by clear, unequivocal and convincing evidence." *In Re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 538 F. 2d 180, 195 (8th Cir. 1976) cert denied 429 US 1040 (1977). There is no manifest error in this statement of law. Further, Plaintiffs have failed to identify any manifest error in the findings

of fact and conclusions of law comprising this Court's Order of March 4, 2005. Absent manifest error, Plaintiffs' Motion must be denied.

Additionally, as this Court recognized in its Order of March 4, 2005, "the issues Plaintiffs raise regarding Yeager and Freeman are not related to any of the recommended rulings by the Magistrate in the R&R." Order, p. 3. Similarly, here, Plaintiffs fail to identify any specific basis for overturning the ruling granting the Fender Defendants' Motion to Dismiss.

For the foregoing reasons, Defendants Fender, Bridges and Gorby urge this Court to deny Plaintiffs' Motion Raising Substantial Questions as to Material Findings of Fact and Conclusions of Law in this Court's decision of 03/04/05 pursuant to Federal Rule of Civil Procedure 52(B).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 1st day of April 2005, via Regular US Mail upon the following:

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